

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

: _____ :

THE UNITED STATES OF AMERICA, :
Plaintiff, :

vs. : Case No: 22-CR-342 SCC

[1] WANDA VÁZQUEZ-GARCED, et al, :
Defendant. :

: _____ :

TRANSCRIPT OF STATUS CONFERENCE
HELD BEFORE THE HONORABLE JUDGE SILVIA L. CARREÑO-COLL
CLEMENTE RUIZ-NAZARIO U.S. COURTHOUSE, SAN JUAN, PUERTO RICO
TUESDAY, JANUARY 16, 2024, BEGINNING AT 3:35 P.M.

: _____ :

A P P E A R A N C E S:

For the United States of America:

Assistant U.S. Attorney Ryan R. Crosswell

Assistant U.S. Attorney Nicholas W. Cannon

Assistant U.S. Attorney Seth Erbe

For Defendant [1] Wanda Vázquez-Garced:

Attorney Luis A. Plaza-Mariota

Attorney Ignacio Fernández-De-Lahongrais

Attorney Peter John Porrata

Attorney Edgar L. Sánchez-Mercado

For Defendant [2] Julio M. Herrera-Velutini

Attorney Sonia Torres-Pabón

Attorney Lilly Ann Sánchez

1 A P P E A R A N C E S C O N T I N U E D :

2
3 For Defendant [3] Mark T. Rossini

4 Attorney Michael B. Nadler

5 Attorney Juan J. Michelen

6 Attorney Lydia Lizarribar-Masini

7
8 ALSO PRESENT:

9 Maria Elena Pintado-Espiet, Courtroom Deputy

10 Clerk
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Status Conference

1 THE COURTROOM DEPUTY: All rise. Court is
2 still in session.

3 (The Court enters the room.)

4 THE COURT: Please be seated. Maria Elena,
5 you can call the case.

6 THE COURTROOM DEPUTY: Calling criminal case
7 22-00342 for a status conference. USA versus
8 Vázquez-Garced, et al. Parties please identify
9 yourselves for the record.

10 MR. CROSSWELL: Good morning, Your Honor.
11 Ryan Crosswell, Nick Cannon, and Seth Erbe for the
12 United States.

13 MR. ERBE: Good morning, Your Honor.

14 MR. CANNON: Good morning, Your Honor.

15 THE COURT: Good afternoon.

16 MR. PLAZA-MARIOTA: Good afternoon, Your
17 Honor. Luis Plaza for the defense of Wanda
18 Vázquez-Garced. Along with me is Peter John Porrata,
19 Edgar Sánchez, and Ignacio Fernández.

20 THE COURT: Good afternoon.

21 MR. PORRATA: Likewise.

22 MS. SÁNCHEZ: Good afternoon, Your Honor.

23 Lilly Ann Sánchez on behalf of Julio Herrera-Velutini
24 along with my co-counsel Sonia Torres.

25 THE COURT: Good afternoon to you.

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1 MS. TORRES-PABÓN: Good afternoon, Your
2 Honor.

3 MR. NADLER: Good afternoon, Your Honor.
4 Michael Nadler, Juan Michelen, and Lydia Lizarribar
5 for Mark Rossini.

6 THE COURT: That's a hard one to roll your
7 Rs.

8 MR. NADLER: I'm getting used to it, Your
9 Honor.

10 THE COURT: All right. So good afternoon to
11 everyone. I would like to start with some
12 housekeeping matters and so let's start with -- I
13 would like counsels for Herrera-Velutini to direct
14 your attention to three filings at Dockets 413, 428,
15 and 431. These are just filings with certified
16 translations and I don't think they are compliant
17 with the local Rule 5(c). So please review the three
18 specific ways in which you can comply with Rule 5(c),
19 and the fourth would be to have a stipulation from
20 the government. So if it's compliant, let me know
21 why it falls within one of these three categories.
22 If it's not, you can choose to have the government
23 stipulate or you can re-file with a certified court
24 translator certifying.

25 Okay. Let's address now the issue of

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1 redactions. We have the outstanding issue of the
2 filings at Docket 262, 301, and 340.

3 Mr. Herrera-Velutini's motion to dismiss, the
4 government's response to the motion to dismiss at
5 301, and the reply at 340. I have received the
6 proposed redactions but I have some issues with these
7 redactions. Namely, the government has filed the
8 redactions leaving some names. I'm not sure if this
9 was on purpose, if we should further discuss this,
10 Mr. Cannon.

11 So ultimately I will grant the request to
12 have these documents -- the motion to dismiss, the
13 response, and the reply -- filed redacted for public
14 viewing; however, information pertaining to
15 informants, Rule 6, grand jury material, and
16 noncharged conduct will be excluded regardless of
17 whether the parties redacted those portions or not.
18 I believe ultimately it is up to the Court to make
19 sure that the information that is out there is for
20 public consumption and not that because of an
21 oversight or some other reason some of that
22 information is there. For that purpose, while we
23 hold the status conference, please make sure that any
24 specific information pertaining to grand jury
25 material, informants, or noncharged conduct is not

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1 discussed openly in open court.

2 Okay, so that's the ruling that I will make
3 once I am clear on what all the redactions should be.
4 If the government wants to be heard on some of the
5 items that I mentioned that perhaps it was not --
6 because you didn't detect it and it's because it was
7 intentional then I need to hear you by sidebar.

8 MR. CANNON: I'm suspecting it was probably
9 unintentional, Your Honor.

10 THE COURT: It was an oversight.

11 MR. CANNON: Yeah. I'll take a look at them
12 today and make sure that there's -- I don't feel
13 differently about it, once I take a look at what
14 you're talking about, and we can let the Court know.
15 I'll file an informative motion and I'll consult with
16 counsel if there's an issue.

17 THE COURT: Okay. If I don't hear from you
18 then I will make those additional redactions, grant
19 the motion, and make public the redacted versions of
20 these three documents.

21 Yes?

22 MS. SÁNCHEZ: Thank you, Your Honor. We
23 also just filed a motion, an unopposed motion, to
24 file the latest motion to compel with the redactions
25 as well, because we went -- we traded redactions with

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1 the government. The government agreed with the
2 redactions and said it was ready to go. So I don't
3 know if the Court wants to look at that one as well,
4 make sure there's no oversight there.

5 THE COURT: Okay, let me go to the docket
6 quickly. And this was filed just like right now.

7 MS. SÁNCHEZ: Right now.

8 MR. CANNON: Literally right now.

9 THE COURT: And Mr. Rossini filed one this
10 morning. All right, let's take it one at a time.

11 So it's at Docket 454. It's an unopposed
12 redacted version of the motion to compel. So the
13 government is in agreement?

14 MR. CROSSWELL: Yes, Your Honor. We
15 reviewed it and we didn't notice anything that they
16 had missed to redact.

17 THE COURT: How about the exhibits attached
18 to the motion? There were no redacted versions
19 produced for the Court's review. Does that mean that
20 the parties do not want to have this public?

21 MS. SÁNCHEZ: We redacted the exhibits as
22 well.

23 THE COURT: On this last filing?

24 MS. SÁNCHEZ: Yes.

25 MR. CROSSWELL: Yes.

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1 THE COURT: Ah, I need to review it then
2 because I haven't. So I'll review it and if I don't
3 see anything that should be redacted additionally
4 then it will be redacted and made public. With the
5 redactions, that is.

6 Now, government --

7 MS. SÁNCHEZ: I think that the motion was
8 not filed restricted right now. Do you want us to
9 pull it and restrict it so that you can look at it
10 first?

11 THE COURT: The redacted version was not
12 filed restricted?

13 MS. SÁNCHEZ: I don't think -- I'm looking
14 on my computer. It doesn't look like that.

15 MS. TORRES-PABÓN: It wasn't, Your Honor,
16 I'm sorry. The government had agreed we file it open
17 as-is, but we can pull it for the Court to review.

18 THE COURT: Let me give it a quick glance.

19 So I would like to have the government on
20 the record and then there's no need to pull it and
21 re-file. If the government reviewed it --

22 MR. CANNON: We reviewed it today, Your
23 Honor, and we have no objection. I think the
24 exhibits were heavily redacted so if you see it it's
25 entire pages basically.

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1 MS. SÁNCHEZ: Right.

2 MR. CANNON: We're satisfied, Your Honor.

3 THE COURT: All right. So there's no need
4 to pull it and re-file it. I'm going to trust that
5 you were all very diligent and that the government is
6 onboard and that it's all fine. So that would be 454
7 which is then granted.

8 Now, regarding the government's
9 representation during the last status conference that
10 all nonpotentially privileged search warrant
11 materials seized from each of the three defendants
12 has been produced, that would be at Docket 435, pages
13 1 and 2. And then what was not produced which was
14 listed at 435, page 3, paragraph 6. The government
15 had represented that it would be produced by
16 December 22nd. Did this happen?

17 MR. CROSSWELL: Your Honor, no. So on the
18 status report filed on the 22nd we listed what has
19 been produced and what's pending. So there's still
20 our foreign accounts and material that the filter
21 team is still reviewing. And I'm happy to update you
22 on that if you'd like.

23 THE COURT: Yes.

24 MR. CROSSWELL: Okay. So, Your Honor, the
25 status report at that time there was 11 items pending

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1 some of which are search warrant returns and some of
2 which are other subsets of documents. Within the
3 last three or four days a filter team has released to
4 us three more searched accounts, which we are now
5 processing. So when the filter team releases it to
6 us it takes us about a week to produce it in
7 discovery; that's sort of the two-step process. So
8 we've received three more and then a fourth I believe
9 we're receiving this week, and then a fifth we expect
10 to receive in the next two weeks. So I guess bottom
11 line is that leaves of the 26 items that went through
12 the filter review we're down to the last five.

13 THE COURT: Last five.

14 MR. CROSSWELL: Yes.

15 THE COURT: Can you give me an estimate of
16 when do you think you're going to conclude this
17 production.

18 MR. CROSSWELL: Sure. So, uhm, we talked to
19 our filter attorney this week and she requested until
20 March 1st. Your Honor, I think it's going to happen
21 sooner than that. And the reason I say that is
22 because since the last status they've turned out 18
23 different accounts or sets of documents, so they're
24 working extremely fast. They have four attorneys and
25 three paralegals; three of the attorneys are Spanish

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1 speakers. So there is a language barrier, there's
2 the amount of information, and then there's also some
3 technical complication sometimes; but, nevertheless,
4 between our last status and to this point it's been
5 18 accounts or sets of documents. And, as I said,
6 after the next two which we're supposed to receive in
7 the next two weeks that takes it down to five.

8 So the filter attorney asked that we be
9 given until March 1st. I'm pretty confident we can
10 finish before that but I just want to set reasonable
11 expectations.

12 THE COURT: Let me hear the defense.

13 MS. SÁNCHEZ: Your Honor -- oh, Luis, would
14 you --

15 MR. PLAZA-MARIOTA: Do you want to speak?

16 MS. SÁNCHEZ: Or you.

17 MR. PLAZA-MARIOTA: I'm first in the
18 indictment.

19 MS. SÁNCHEZ: Go ahead.

20 THE COURT: Mr. Plaza.

21 MR. PLAZA-MARIOTA: May I approach the
22 lectern.

23 THE COURT: You may.

24 MR. PLAZA-MARIOTA: May it please the Court.

25 THE COURT: You may.

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1 MR. PLAZA-MARIOTA: Your Honor, I have good
2 news and bad news. Let's go with the good news
3 first.

4 THE COURT: Good news first.

5 MR. PLAZA-MARIOTA: Okay. As Your Honor
6 knows, we have consistently and in good faith worked
7 with the government through the submission of letters
8 pursuant to the local rules. And it seems to me that
9 we have developed a very good relationship with the
10 prosecutors. I mean, they are straight shooters, we
11 are shooters, we're dealing well with them. We have
12 been requesting texts, precisely texts.

13 THE COURT: Text messages.

14 MR. PLAZA-MARIOTA: Text messages. As Your
15 Honor knows, in the indictment, text messages are
16 being used as part of the overt acts and the whole
17 information of the alleged commission of the offense.
18 Well, on September 22nd, September 23rd, we requested
19 to the government not only the texts that appear in
20 the indictment but what preceded and what happened
21 after the texts, so we can have the whole
22 conversations. And basically we received a response
23 from the government that they were going to supply
24 that information as soon as the filter team would
25 work on the specific phones of the individuals that

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1 appear quoted in the indictment. These are
2 individuals that either pled guilty already in the
3 indictment or are witnesses cooperating for the
4 government. Well, we received recently submission
5 No. 11 which is --

6 THE COURT: Production 11.

7 MR. PLAZA-MARIOTA: We're moving to the bad
8 part, okay. The submission 11, voluminous doesn't
9 really explain what we received. We know that there
10 somewhere appears most of the information that we
11 have been requesting through the local rules. So
12 that's the good news.

13 THE COURT: The text messages, yes.

14 MR. PLAZA-MARIOTA: The problem is that in
15 the way it's been produced it's unsearchable. I mean
16 it doesn't have nothing in chronological order or in
17 a way that you can spend some time looking at what
18 the index says and you will find it. To give you an
19 example, for example the index could say that there's
20 something regarding, just to say a name,
21 Mr. Blakeman. And you will go there and when you
22 open or try to open that it's 85,000 documents there
23 instead of one page. If you see the index you will
24 say it's one page, but when you go there it's --
25 it's -- it's something very voluminous.

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1 So it has become a real problem trying to
2 figure out how to deal with that. I know that
3 counsel for Herrera already filed a motion.

4 THE COURT: Well, Mr. Rossini filed a motion
5 saying that it's a million pages.

6 MR. PLAZA-MARIOTA: Well, it seems to be --

7 THE COURT: Let me ask Mr. Crosswell
8 something. Mr. Crosswell, when you stated before
9 that March 1st is the expected date from the filter
10 team to make these productions, does that include
11 this type of evidence, the text messages; or this is
12 a separate category?

13 MR. CROSSWELL: It would include the
14 non-privileged text messages from all the rest of the
15 offense. And so -- and I know that Mr. Plaza is
16 probably talking about all the accounts. The
17 Governor Vázquez's texts have all been produced, her
18 phones have all been produced. Something that I
19 think that he's getting at, and also Mr. Rossini
20 writing the motion today, is the searchability. And
21 what is remaining for the phones is we are producing
22 and using a software platform called UFED Reader
23 which essentially makes it easier to read the
24 materials. So some of what's been produced is not
25 with the UFED Reader, but when they get the full copy

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1 of the phones they'll have the UFED Reader software
2 which helps with that.

3 So I think in terms of searchability and
4 readability, it was produced on the 22nd, Your Honor,
5 there was a holiday. We have been -- as he
6 mentioned, we've worked with him and the other
7 defense counsel too whenever there's been discovery
8 issues and we'll continue to do that, if there's any
9 problem reading the material.

10 But to answer your specific question, yes,
11 that would mean by March 1st they'll have all the
12 non-privileged material, and then the next step is
13 for them to assert privilege in a potential --

14 THE COURT: So Mr. Plaza.

15 MR. PLAZA-MARIOTA: Yes, ma'am.

16 THE COURT: When you address this issue of
17 the latest production and the problems you've been
18 having with reviewing this, I would also like you to
19 let me know what is your position regarding this
20 production by March 1st.

21 MR. PLAZA-MARIOTA: Very well. Very well,
22 Your Honor. Now, in the meantime I can already tell
23 you that it doesn't seem feasible that we are going
24 to be able to use submission No. 11 because of the
25 huge --

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1 THE COURT: You won't be able to use it?

2 MR. PLAZA-MARIOTA: I don't think. I really
3 don't think so. I mean -- I have the impression that
4 maybe the prosecutors haven't seen what the technical
5 people sent us, but I imagine that if they see it by
6 themselves they will probably agree as to something
7 that we are saying here; because we are not making
8 this up. I mean, it's something very difficult to
9 navigate.

10 And then -- just to give you another
11 example, Your Honor, we received in December the
12 images for the phone of our client. That would also
13 include the cloud. The filter team is giving us a
14 deadline of January 26th to assert the privilege.
15 The cloud, we are reviewing in excess of 50,000
16 images; and the phone like 49,000. I've never been a
17 member of a filter team, but it's -- it's -- it's --
18 I mean the filter team will tell you, Check in this
19 Excel sheet this information, and when you enter
20 there, there could be 5,000 messages in what seems to
21 be like one item.

22 So we are trying to comply with the filter
23 team's deadline. I mean, we were preparing for trial
24 when all this happened. So it's -- the sheer volume
25 of things that we are receiving that doesn't seem to

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1 have like anything to do with the case is -- is -- is
2 great.

3 And then of course there's always the
4 problem that as soon as the government sends us the
5 submission we have the due diligence and we have the
6 obligation to look into it and to look at it, you
7 know, in real terms. And it holds, it holds, our
8 preparation for trial.

9 We are inclined, Your Honor -- reading
10 Mr. Rossini's motion that was submitted today, we are
11 inclined in joining what is -- what appears there,
12 because the motion is very technical and it explains
13 in very technical terms what we are facing with the
14 information and, it seems to me, accurately reflects
15 the possibility that Brady material or things that
16 are really important are somehow buried in that
17 avalanche of documents, in that lake of evidence that
18 we have received. So.

19 THE COURT: Let me ask the government again.
20 Mr. Crosswell, this motion at 453, Mr. Rossini's
21 motion, have you had a chance to review it?

22 MR. CROSSWELL: I did, Your Honor, briefly.
23 And one thing I do want to point out, which is what I
24 was alluding to a moment ago, and we have been
25 scheduled to talk with Mr. Rossini's counsel and we

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1 just -- uhm, I don't think that we got a chance to
2 discuss this with him. But one thing it mentions is
3 that it would help to have UFED Reader to review this
4 material. And the point I was just making was in the
5 next production when we get the entire copies of the
6 phones they will actually have that UFED Reader.

7 And so what we've been doing, for example,
8 if we have InScope messages from a phone, we've been
9 trying to push that out as soon as we get it from the
10 filter team. And so counsel will receive that and
11 they say, you know, UFED Reader would be nice to
12 review this, and the point we're trying to make is
13 they're going to get that when they receive the
14 entire copy of the phone. And that's why I think the
15 point we're trying to make here is that if there is
16 some difficulty or technical issue with the
17 production -- counsel may be right, we may not be
18 aware of it. I've looked through the defense's
19 production today after Mr. Rossini filed his motion
20 to see if I could see what he was referring to and I
21 think that's something that we can confer with him
22 on.

23 THE COURT: Do you think that if it goes
24 through UFED it will be more readable and more
25 manageable?

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1 MR. CROSSWELL: Well, that's exactly what
2 Mr. Rossini's requesting is; and, yes, I do.

3 THE COURT: Okay, let me hear from
4 Ms. Sánchez regarding this issue. We will take them
5 one by one.

6 MS. SÁNCHEZ: Okay, Your Honor, as the Court
7 alluded to beforehand, we filed a motion to compel or
8 exclude everything from Production 11 onward back on
9 the December 27th. It's the motion that we talked
10 about earlier regarding the redactions right now
11 today because there's several layers of problems here
12 with the discovery, okay. Leaving aside the fact
13 that Production 11 is 1.4 million Bates stamped
14 documents, which is almost unbelievable that that
15 would be produced a year and a half after this case
16 was indicted, the local rule requires that discovery
17 being produced by the government be within seven
18 days.

19 And on top of everything, Rule 5(f) requires
20 that Brady be produced immediately as well. And that
21 order was issued by Chief Judge Arias back on
22 September 7th of '22. And here we are almost
23 18 months later and we received 1.4 million
24 documents.

25 And, as Mr. Rossini's motion points out, you

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1 open up one Bates stamp number and so you think it's
2 one document, it turns out that it's one Bates
3 stamped document and behind it, in one example,
4 there's 88,000 pages that are not Bates stamped. So
5 the total of this production which is now at 5
6 million pages is actually, by the expert's
7 calculation of what he's looked at that last hard
8 drive we got, is somewhere around the neighborhood of
9 10 million documents which is what he's calculated.

10 And it' completely, number one, untimely,
11 prejudicial. All of this should have been produced,
12 had been ready to produce beforehand, before this
13 case was indicted. The search warrants are back from
14 2020 and the indictment was not until August 3rd of
15 2022. This all should have been put together in some
16 fashion and had been ready to produce immediately.

17 Moreover, it's not just the search warrant
18 returns that we're getting in here; there are
19 documents that are -- documents from the case and
20 agent 302s that are dated from '20 and '21 that we're
21 just getting now in this production a year and a half
22 later hidden within this, like, avalanche or sea of
23 documents. There's got to be some sort of recourse
24 as to what the government has done in this case.
25 We've been filing motions regarding the government's

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1 actions in this case since back in July, and this
2 last discovery issue is the last thing that is
3 completely unacceptable.

4 And for the government somehow to say that
5 because the documents had to go through a privilege
6 team filter team that's what has delayed it, they
7 should have gone through a filter team from the
8 moment that they received these phones initially.

9 And the Court needs to understand also that
10 they're parsing out privilege versus non-privilege.
11 So they're saying that the non-privileged documents
12 may be all turned over by March 1st, but the
13 privileged documents that everybody has to go through
14 and do a privilege log on -- which Mr. Plaza just
15 referred his client's alone is 100,000 e-mails that
16 he has to review and put in a privileged log, and
17 then that privileged log has to be reviewed by the
18 government, and then if they have any objections on
19 that it has to come to the Court, the Court has to
20 decide what is privileged or not, and then once that
21 ruling happens then it's finally when we get those
22 privileged documents that may not be privileged or
23 the privileged logs themselves.

24 For Mr. Herrera's phone, we just received --
25 this is our second privileged log that we have to

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1 prepare. The first one was about 4,000 e-mails, and
2 this one is 11,000 e-mails that we have to review and
3 prepare privileged log. Our deadline was
4 January 23rd; I asked the filter team for at least
5 another four to six weeks because there's, you know,
6 11,000 e-mails. It's not just reviewing them, you
7 have to put them on the spreadsheet with all of the
8 different categories how a privilege is logged,
9 they're requiring.

10 And, more significantly, I don't understand
11 why the government decided to do this filter team
12 review like backwards. Frances Díaz, their main
13 cooperator, and one of the main individuals in this
14 case, her phone -- nothing from her phone or Icloud
15 has been turned over or reviewed yet. Two of the
16 other very important witnesses in this case, Lillian
17 Sánchez and Marisol Blasco, which are key witnesses
18 and worked at the governor's office with Ms. Vázquez,
19 their phones haven't been done and produced.

20 At this point, it's 18 months later and, as
21 we've stated in our motion, I think everything should
22 be excluded from Production 11 onward and it cannot
23 be used in the Government's case in chief at this
24 point. It is completely outrageous and contrary to
25 case law, the local rules, the federal rules. And it

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1 has been highly prejudicial to my client to be under
2 indictment for this significant period of time and
3 for, to this date, the discovery -- the main pieces
4 discovery directly at him have not been turned
5 over -- including *Brady* information that we found
6 hidden within this 1.4 million pages that they say
7 they have, which is probably closer to 10 million,
8 pursuant to the expert, but I'll let Mr. Rossini
9 speak to that with Mr. Nadler as counsel.

10 THE COURT: Counsels for Mr. Rossini, in
11 addition to the motion you already filed, 453, is
12 there anything else you would like to add regarding
13 this issue before I allow the government to respond?

14 MR. NADLER: Quickly, may I.

15 THE COURT: You may.

16 MR. NADLER: May it please the Court.

17 THE COURT: You may.

18 MR. NADLER: We did ask for the UFED files.
19 They will make the discovery infinitely more
20 searchable. The issue here is not whether we can now
21 search it, which we need for our case, but it's the
22 volume that's being produced. It is physically
23 impossible. And Mr. Cannon and Mr. Crosswell have
24 been generous, have been gracious. We've had good
25 conversations. This is something that should have

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1 been done at the beginning. We are now 18 months in.
2 It is physically impossible even for the government
3 to have reviewed all of this.

4 And that's -- the problem now is we as the
5 defense are doing a relevance review. They're giving
6 us everything -- pictures of families. There are
7 things that are completely irrelevant to the case.
8 That is what's happening in this non-privileged
9 production. There are things that clearly have
10 nothing to do, and the only way we're able to find
11 this stuff is like throwing a dart at a dart board.
12 We are randomly choosing things to review and that's
13 how we're finding now what is relevant for our case.
14 That's what's starting to happen.

15 So when we talk about documents or
16 Productions 1 through 10 at this point document or
17 Production 11 contains more pages than the previous
18 ten. It was almost physically impossible for just
19 the two of us to review ten. There were some things
20 that were more searchable. Now 11, even if it's
21 produced in the version that it should have been at
22 the beginning, it's going to be insanely difficult to
23 review all of that material. We are essentially
24 doing searches and hoping we're finding relevant
25 documents because there's so many irrelevant things.

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1 So what we're asking for is, yes, that production for
2 us to determine whether there's anything for our case
3 in chief, but because of the point we're at what
4 we're also requesting is at least for the stuff from
5 11 and going forward the government should not be
6 allowed to use that in their case in chief going
7 forward. Thank you, Your Honor.

8 THE COURT: Thank you.

9 Mr. Crosswell.

10 MR. CROSSWELL: Yes, Your Honor. Thank you.
11 So the first thing -- I want to step the Court back.
12 Way back in November 22nd, Judge Arias ruled that all
13 production of searchable materials stop while he
14 decided on defense's motion for filter. Actually
15 they had asked for a special master. So at that
16 point we could not produce any of this discovery.
17 Then in February he ruled that we would turn over the
18 filter review to a separate component of the
19 Department of Justice, which we did. By the time we
20 got the last filter terms from the defendants, it was
21 May and then the FBI sent the accounts to the filter
22 team in June.

23 Since that time, they have been working at
24 warp speed with translations, with things that are
25 not in their language, through 26 accounts. It is a

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1 lot of material, but I also want to put this into
2 context. When we talk about a million pages, each
3 text messages constitute one page. So, for example,
4 if I text Mr. Cannon before court and say, Good
5 morning, can you pick me up for court? And he
6 responds in three text messages, that's five pages.
7 That takes five seconds to review. And I'm not
8 diminishing the fact that they have a lot of data to
9 go through. What I'm trying to say is the total
10 discovery produced at this point is about 500
11 gigabytes which is about the size of half a
12 commercial hard drive. So it is a lot, but it is
13 certainly not compared to some white collar cases
14 where you are talking about terabytes of information.
15 That's not what this is. That said, we can only
16 produce it as fast as the filter team gives it to us.

17 And so, you know, there is Rule 16 material
18 that's being produced for the first time, but that's
19 because we have just received it from the filter
20 team. The issue is, this was ordered by Judge Arias.
21 This was what he wanted, and so this is what it takes
22 and it takes time. As I mentioned, we have four
23 filter attorneys working on this. But the defense
24 can't have the full filter review and also have
25 material in November 2022 when Judge Arias rules we

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1 have to do this filter production.

2 So, as I mentioned earlier, we are nearly
3 done. After we produce the next three accounts we
4 received we have five left. We will continue to work
5 with the defense for any accounts that they're having
6 trouble reading, but we can't produce things
7 immediately and also run them through the filter.

8 And the bottom line about the filter, I mean
9 the defense has complained about that's been done
10 before, this has all been litigated. This has been
11 litigated and Judge Arias ruled that the filter
12 review will be done by a different component. And so
13 they turned over filter terms. And in the case of
14 Mr. Herrera he's turned over one hundred filter terms
15 based on different attorneys that have represented
16 mostly his bank at some point. The point being is,
17 we have run that not only on his own accounts but the
18 accounts of, for example, Frances Díaz who consented
19 and voluntarily turned over her phone and her e-mail.
20 So we are going so far beyond that we are actually
21 running his terms against her material. That's part
22 of the holdup.

23 And if Mr. Herrera doesn't want that review
24 to be done we could produce it next week, but I guess
25 the point being is we can't produce it immediately

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1 and also run these filter terms. And so it's being
2 produced as fast as we can. But this is under the
3 order of the Court by Judge Arias that we're doing
4 this. And we're also applying it to an account that
5 was Frances Díaz's account, a witness in this case.
6 And I should also add, Your Honor, her name is in the
7 indictment stated publically so this is not something
8 that's not already public.

9 MS. SÁNCHEZ: Your Honor, frankly, I would
10 love for the Court to review Judge Arias's order.
11 What Judge Arias ruled was for the government to
12 follow the law which they had failed to do from the
13 beginning of this case since they received those
14 search warrant materials and they did not put it
15 through a filter team initially, which is the way it
16 should have been done, when they knew that every
17 single person and the defendants in this case all
18 were either lawyers or very lawyered up.

19 So they knew that when they got especially
20 the phone, whether it was Frances Díaz who's a
21 lawyer, my client who has one hundred lawyers because
22 of all his businesses, Wanda Vázquez who is a lawyer,
23 okay, they knew the minute that they got those search
24 warrant data in 2020 that they should not have looked
25 at them, which they did. And we just found more 302

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1 FBI evidence that they did look at it when they
2 misrepresented that they hadn't looked at it. But
3 we'll get through that and it's within our motion,
4 let me say that.

5 So what happened was when we found out that
6 there was no filter team in place, the way that it
7 should've been done from the minute they received
8 these search warrant returns, we filed our motion
9 with the judge, first, for two reasons: Number one,
10 to get a filter team in place and, number two, for
11 refusal of the government and the agents who had
12 looked at material that was privileged when they
13 shouldn't have without using a filter team.

14 So Judge Arias, when you look at his order,
15 he told the government they needed to follow law that
16 they should have followed since the onset. And that
17 is why, again, we still believe, number one, that the
18 material that hasn't been produced to date should be
19 excluded and, number two, there's still pending the
20 issue about the refusal of the government prosecution
21 team and the agents because we have found now in the
22 1.4 million documents that they just produced 302s of
23 the FBI that confirm our suspicion -- that they
24 looked at a bunch of the material that was privileged
25 before the filter team was in place.

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1 MR. CROSSWELL: Your Honor, this has been
2 litigated, I'll say that again, but we have in -- our
3 response to their initial motion on the filter team
4 we had stated the FBI did review the search warrant
5 account before the filter team was put into place,
6 that's how the indictment was built. However, in
7 March of 2022, mostly using names of lawyers that we
8 learned represented the bank we ran the accounts
9 through filter terms. We used, I think,
10 approximately 20 terms of persons that we knew had
11 represented the bank and then after the indictment
12 came down the defense challenged this.

13 Now, Mr. Herrera since that point has given
14 us about one hundred attorneys' names and that is why
15 this filter scope is bigger, and that's fine; but
16 there's no way to know a hundred different attorneys'
17 names prior to the indictment without knocking on
18 Mr. Herrera's or his counsel's door saying, "He's
19 under a grand jury investigation." That's not an
20 option.

21 And, beyond this, we never seized bank
22 accounts -- I mean, excuse me, Bancrédito's
23 professional servers. We never went in and seized
24 e-mails Bancrédito.com, and these were personal
25 e-mail accounts. And so it's not to be expected that

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1 there'd be a bunch of e-mails related to Bancrédito,
2 its president, or its owner and his attorneys on
3 Yahoo accounts. I mean, we were told that this bank
4 was in legitimate operation and apparently they're
5 exchanging e-mails on their Yahoo accounts. That
6 wasn't to be expected. And so we did implement a
7 filter review, it wasn't done right from the start,
8 that's been clear, we stated that in our first
9 response. And since that point because of that Judge
10 Arias ordered that the fraud's filter team, a
11 different component of DOJ, would run this filter.
12 And it's taken awhile but it's actually also been
13 very, very quick given the scope of the material.

14 THE COURT: I'm reviewing Judge Arias's
15 order and it was entered on February 28th of 2023.
16 That's what I'm reviewing right now.

17 MS. SÁNCHEZ: Your Honor, and just to be
18 clear, I mean, I sat in the Government's chair for a
19 long time as well before being a defense attorney.
20 When you get any kind of electronic data that you
21 know has attorneys' names in it and you know 20
22 attorneys, that's not -- you just don't use 20
23 attorneys, and that's not an excuse for not putting a
24 filter team in place; because at the end of the day
25 if you look at every single e-mail, if it has an

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1 esquire, if it has a law firm, if it has a law firm
2 name, you know that that's a privileged document.
3 It's not as if we have to give them a hundred names.
4 It's easier if we give them a hundred names, but the
5 filter team has the capability of looking at every
6 single document and realizing which ones are
7 privileged or not, so this is not an excuse
8 whatsoever. And they knew the number of attorneys
9 that Mr. Herrera had and the bank had.

10 MR. NADLER: If I may just quickly. Again,
11 no-fault to Mr. Crosswell but this assertion that
12 every text messages is one page just is not true.
13 And the example is the 83,000 page document that has
14 one Bates stamp on it. That's a perfect example.
15 When you open that, that is John Blakeman's WhatsApp
16 messages with every single person, page after page
17 after page, in no order, unsearchable. It just
18 goes -- it's unreviewable. The government couldn't
19 review all this stuff, so they're literally giving us
20 everything. So we have to go through page by page by
21 page to see who they're communicating with and if
22 there's any relevant document.

23 The hotdoc issue is a whole other issue; the
24 privilege issue I'm not going to get into. For the
25 first time we heard that was a hotdoc folder that had

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1 information that the government reviewed or the
2 agents reviewed prior to, I believe, the filing of
3 the indictment that the government believes. And
4 it's the same point with InScope. I'm not sure what
5 InScope means. I'm assuming they're referring to the
6 search warrants and the terms of that, but there are
7 several individuals who we have all readily
8 identified are cooperators. We believe InScope is
9 far smaller than what should be produced; it's a
10 relevance determination at this point. And the
11 defense is solely making that determination. The
12 government is giving us everything.

13 THE COURT: But don't you want to make that
14 determination? You don't want the government to make
15 decisions regarding relevance at this point.

16 MR. NADLER: I don't. But I don't want
17 500,000 pictures or voice notes that I have to go
18 through and listen that are between Wanda and her
19 husband that have nothing to do with anything.
20 There's a certain point where it is clear, and even
21 taking a broad definition of relevance, that have
22 nothing do with this case. "I love you, honey. I'll
23 be home for dinner." You have to go through
24 thousands of hours of voice notes to determine if --
25 it's impossible. I can't do that. There should be

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1 some basis on even the broad Rule 16 of relevance
2 that these documents should be turned over in a more
3 calculated, searchable, logical way.

4 And, again, I do want to make that
5 determination, but I want to make that determination
6 on a pot or pool of documents that actually, in the
7 broadest possible definition, relate to this case.
8 And I can't.

9 MR. CROSSWELL: Judge, I just want to
10 briefly respond to one point that he made. He is
11 right that there is this page that has these
12 80,000 pages of documents. What I'm saying is that
13 when he gets the full phone in the next production
14 he'll have the UFED Reader and be able to go through
15 that search.

16 Second point, it is the case that a lot of
17 these "pages" of discovery, again, at this point it's
18 only about 500 gigabytes -- and there's going to be
19 more, so that's going to grow. A lot of the pages
20 are single text messages which take a second to read.
21 But I guess the point is we are -- we have taken a
22 very expansive view of our discovery obligations. We
23 have produced several files not only in this case but
24 two other cases. And we're not going to hold
25 anything back.

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1 Vázquez's counsel has asked us to produce
2 less, and we always feel like the safest way is to
3 produce everything so that Mr. Rossini's counsel and
4 Mr. Herrera's counsel, and Ms. Vázquez's counsel can
5 make the determination of what's important. And a
6 lot of that is pictures or recipes or music or
7 movies. Most of it is not relevant. But we don't
8 have any other choice, we have to give it all over.

9 And at this point, again, it is about a half
10 a terabyte of information, which is not outside at
11 all of the scope of a general white-collar case.
12 It's just taken longer because of the unique history
13 of this filter review.

14 THE COURT: Okay, so by March 1st you think
15 you're going to be done with this production?

16 MR. CROSSWELL: Correct.

17 THE COURT: And it will be put in the UFED
18 format?

19 MR. CROSSWELL: Yes, for the phones, Your
20 Honor. And, as counsel pointed out, they do have
21 some homework too. They have to assert privilege.
22 They've asked for some extensions; we never fought
23 them on that. But it kind of goes to show you when
24 they're just reviewing the stuff that the filter team
25 has pointed out is potentially privileged, it takes

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1 time. Well, it takes us time as well.

2 THE COURT: All right. So there is no issue
3 regarding the privilege log. The government does not
4 oppose that petition?

5 MR. CROSSWELL: Your Honor, we do not expect
6 to oppose it. I mean, we would like to see what the
7 defense shows us. But in particular with the case of
8 Mr. Herrera, because this is the one who it's going
9 to apply to most, he had a hundred filter terms, we
10 understand; but mostly it's going to relate to
11 banking issues that were several years before the
12 indictment. We don't care to see those
13 communications, so we do not expect that once
14 Mr. Herrera, Mr. Rossini, and Ms. Vázquez assert
15 privilege we don't expect to fight them over that.

16 THE COURT: You mean on the request for the
17 privileged log?

18 MR. CROSSWELL: Oh, sorry, Your Honor. Yes.
19 So they will get the privileged logs but basically
20 what we need -- like, for example, we need for
21 Mr. Rossini to return his privileged log before we
22 can turn it over to Ms. Vázquez. So we don't oppose
23 Mr. Herrera's request for privileged logs, but they
24 need to come from the other defendants and the third
25 parties and at which point we will provide them.

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1 THE COURT: And how long do you think this
2 process will take?

3 MR. CROSSWELL: Well, so at this point I
4 believe that Mr. Rossini has asked until late
5 February to turn over his privileged log.

6 THE COURT: Okay.

7 MR. CROSSWELL: Let me just go back to my
8 notes, Your Honor. So Rossini's requested until
9 February 16th, I believe. Mr. Herrera's requested
10 until February 23rd. And I don't believe Governor
11 Vázquez has requested an extension yet.

12 THE COURT: So that would be before the
13 March 1st?

14 MR. CROSSWELL: Correct. And by the
15 March 1st deadline, Your Honor, we mean turn over all
16 the non-privileged information that we have. The
17 next step will be for them to produce their --

18 THE COURT: All right. Now, during our last
19 status conference the government mentioned --

20 MR. PLAZA-MARIOTA: Your Honor, may I say
21 something briefly?

22 THE COURT: Regarding this issue. Yes, go
23 ahead.

24 MR. PLAZA-MARIOTA: May I approach.

25 THE COURT: Yes.

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1 MR. PLAZA-MARIOTA: Your Honor, I try to
2 foretell the future like Panasonic, *verdad*. I know,
3 I know -- okay, I know that everybody will try their
4 best. Fine, okay. When March 1st comes we will
5 still be in the lake of evidence that we have
6 received and nothing will have happened because
7 frankly we can't. Okay. We will need a record. We
8 will need the record. I mean, we will need the
9 record because nobody knows if this case will
10 eventually end up in the First Circuit Court of
11 Appeals. We need a record.

12 If trying everything that Mr. Crosswell is
13 saying we still cannot access the evidence, I will
14 insist on an evidentiary hearing with technical
15 experts that will create a record of what we are
16 facing because it is our obligation to defend our
17 client and if by any chance over there is some Brady
18 or whatever we didn't see it and then later on
19 somebody sees it, what they will say? Ineffective
20 assistance of counsel. Because we didn't see it.

21 So, fine. We will try our best. And I know
22 we have tried with counsel for the government to
23 reach agreements and I'm hopeful I'm hopeful, but,
24 but, if March comes and we're in --

25 THE COURT: Okay, let's wait until March

Status Conference

1 comes.

2 MR. PLAZA-MARIOTA: -- and we're in the
3 situation we will move the Court respectfully for
4 that. Okay?

5 THE COURT: Okay, let's not cross that
6 bridge just yet.

7 MR. NADLER: May I say one thing.

8 THE COURT: Let's wait for the production,
9 I'm going to give you the time to make the
10 production, work with the privileged log, and try to
11 work it out with the UFED. If you still can't then
12 you can come back to court for any relief.

13 Go ahead.

14 MR. NADLER: I don't want to get lost in the
15 forest. We are talking about, in large part, the
16 downloads from the phones, but a significant portion
17 of this is the search warrant Icloud e-mails. And
18 Production 11 contained significant information
19 documentation regarding these documents and stuff in
20 the cloud. There's not metadata of who edited, who
21 created, who viewed in the way they produced it. So
22 the UFED will hopefully make a voluminous production
23 more searchable, but it won't solve the problem on a
24 large significant portion of what was in 11 and even
25 some of the previous productions at this point.

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1 THE COURT: So what's the relief you seek?

2 MR. NADLER: That they can produce the
3 originals, not just the load files. The way that the
4 load files have been created it is removing metadata,
5 and when we get it you can't see who modified
6 sometimes. You can't see who created it. There's no
7 dates. So when we go to look at a specific time
8 period we're missing thousands, if not millions, of
9 documents.

10 THE COURT: But you were complaining of
11 being overwhelmed with document now you want more
12 documents? I didn't follow this last argument.

13 MR. NADLER: That's not what I'm saying,
14 Your Honor. I'm saying I want relevant documents,
15 but if you're going to give me things and make me do
16 the search to determine what's relevant, I should
17 have the ability to do that. I shouldn't have to
18 look through every single page if I'm looking for
19 documents between X date and X date or from that's
20 been created by my client, Mr. Herrera, or Ms. Díaz.
21 And I can't find those documents because the metadata
22 has been removed. Yes, there will be some cure on
23 the UFED, but that doesn't cure everything.

24 THE COURT: All right. Let's wait until the
25 production finishes and what happens with the new

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1 productions using the UFED and we'll deal with that
2 when we have to, but for now I'm going to remain
3 hopeful that it will be produced and that it will be
4 manageable and that it will be done within this time
5 period of March 1st.

6 Regarding the classified information, during
7 the last status conference the government stated that
8 my chambers would be contacted and that these
9 documents would be sent over and that I just needed
10 to wait and that that was the proper and formal
11 process or procedure. I haven't received this. So
12 this should still be sitting at Judge Arias' office.

13 MR. CANNON: We were told that next week
14 that the process was already -- I'll find out
15 immediately.

16 THE COURT: It hasn't happened.

17 MR. CANNON: We had been told that they had
18 been in contact with somebody from your chambers.
19 I'll follow-up today.

20 THE COURT: No. Everyone in my chambers and
21 in my staff is aware of this so they know that it
22 should be coming but it's been awhile, so if you
23 could please follow-up.

24 MR. CANNON: Absolutely. We were told that
25 it was on the way, Your Honor.

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1 THE COURT: All right. Now I want to hear
2 from counsels for Herrera regarding their filing at
3 438 and the disclosure of documents that they allege
4 are in possession of the government and that have not
5 been produced.

6 MS. TORRES-PABÓN: Yes, Your Honor, that's
7 the motion to compel and to exclude.

8 THE COURT: Yes, I'm referring to that same
9 motion, but I'm now -- I would like to hear you on
10 these other documents that you seek and you allege
11 that these documents are in the possession of the
12 government and have not been produced.

13 MS. TORRES-PABÓN: If I may, Judge, there's
14 a series of category of documents. One of the major
15 disputes among the parties is whether they should
16 be -- the government should be obligated to go to the
17 regulatory agencies which we understand were part of
18 the investigation. And we've provided the Court the
19 reasons why we think the information is material.
20 The government is essentially stated all the
21 regulatory agencies they were not part of the
22 investigation, we don't have an obligation.

23 THE COURT: You state in your motion that
24 they are part of the prosecution team. Is that your
25 theory?

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1 MS. TORRES-PABÓN: That's our theory based
2 on the case law, Your Honor. I know that Court
3 doesn't want me to state here the names, but I
4 believe they had 10 or 11 informants from the OCIF
5 office only working on this case. They had the
6 commissioner and the prior -- the current
7 commissioner and prior commissioner working on what
8 we call reaching out to the bank. And, as we stated
9 there, it's an issue of materiality, Your Honor, and
10 materiality is not for the government to determine.
11 It's not for them to determine how we're going to use
12 it and how relevant it is. That's for the defense
13 and how that fits into the defense's theory. And it
14 is our theory that in fact the agencies were used
15 essentially --

16 THE COURT: Yes, I understand.

17 MS. TORRES-PABÓN: You understand our
18 theory. So we understand --

19 THE COURT: I'm talking about production
20 now. I understand your theory. But the government
21 has represented that it has produced OCIF records
22 related to 2016, 2017, 2019 audit, examinations, all
23 related to banking. So --

24 MS. TORRES-PABÓN: Well, we're looking --
25 I'm sorry.

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1 MR. CANNON: All we've received from OCIF
2 we've produced. We just don't -- our objection is
3 putting the government in a position to go over
4 through OCIF's files and start to look through stuff
5 for the defense. They are not part of the
6 prosecution and we don't have that obligation.

7 THE COURT: But I want it to be clear that
8 what you have received you have produced.

9 MR. CANNON: Yes, Your Honor.

10 THE COURT: Okay.

11 MS. TORRES-PABÓN: Your Honor, if I may
12 address one point. There's one issue which is the
13 communications of the government with OCIF and
14 FinCen. That's in their possession. They don't have
15 to go to --

16 THE COURT: Well, hasn't the government
17 produced every 302?

18 MS. TORRES-PABÓN: No. They haven't
19 produced communications. In one of the -- I think
20 it's the August letter they say they're going to talk
21 to the FBI and see if they have anything --

22 MR. CANNON: Your Honor, we're looking for
23 e-mails between OCIF and FBI personnel so that we can
24 produce that as well, if there was any. There may --
25 we've talked to the agents who were running that case

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1 back then and there may be a few, but we're going to
2 get it and produce it.

3 THE COURT: All right. Okay, regarding
4 confidential human sources case files, the government
5 has made a representation that it has produced
6 everything except stuff that has to do with
7 administrative stuff.

8 MR. CROSSWELL: Yes, Your Honor. So if it
9 involves a witness being paid or a witness making a
10 statement or their quarterly reports which sort of
11 reports in their progress, whether it be open or
12 closed, any substantive stuff has already been
13 produced to the defendants. There is administrative
14 paperwork that is just not relevant, we didn't
15 produce that; but everything that would potentially
16 be relevant to any witness's credibility or any
17 Rule 16 has been produced.

18 THE COURT: Any *Giglio*?

19 MR. CROSSWELL: Yeah, I mean, Your Honor, if
20 a witness was, for example, given any benefits they
21 would have received that already. Yes, that's been
22 produced.

23 THE COURT: That's the classic *Giglio*.

24 MR. CROSSWELL: Yes.

25 THE COURT: That's been produced.

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1 MR. CROSSWELL: Correct.

2 THE COURT: So what's considered
3 administrative?

4 MR. CROSSWELL: Uhm, for example, like when
5 a witness is signed up, Your Honor, it will give
6 their date of birth, that sort of information,
7 biographical information, their job. I mean, I'm
8 trying to recall because it's been a few months since
9 I've gone through it, but just stuff that really
10 doesn't have any relevance and doesn't speak to their
11 credibility.

12 MS. TORRES-PABÓN: Your Honor, if I may.
13 Again, it's not up to the government to determine
14 relevancy. That's why I -- what we're asking is for
15 the Court to look at it.

16 THE COURT: All right.

17 MS. TORRES-PABÓN: That's all we're asking.
18 I don't see, you know, why -- the government's
19 response is, Oh, that's a waste of time. But that's
20 not up to them.

21 THE COURT: Can you produce it for in camera
22 review?

23 MR. CROSSWELL: Sure, Your Honor.

24 THE COURT: How long do you need?

25 MR. CROSSWELL: I want to talk to the FBI

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1 just because I'm afraid of -- but as fast as
2 possible, Your Honor. We will figure out a way to do
3 that. It's a little bit tricky to get kind of a
4 database but we'll figure out a way.

5 THE COURT: Okay.

6 MR. CROSSWELL: Would you like a status
7 update on that?

8 THE COURT: 30 days for the in camera review
9 of that.

10 MR. CROSSWELL: Sure.

11 MR. CANNON: Your Honor, what I would ask,
12 if Your Honor is willing to entertain this, we can
13 have an agent come over to your chambers and show you
14 what we're talking about as administrative documents.
15 I think the practice isn't to have these really on
16 any docket of any kind given the --

17 THE COURT: I don't have a problem with
18 that.

19 MR. CANNON: All right. Thank you, Your
20 Honor.

21 THE COURT: So have the agent coordinate
22 with my office and I'll review it.

23 MR. CANNON: Will do, Your Honor. Thank
24 you.

25 THE COURT: Okay.

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1 MS. TORRES-PABÓN: Your Honor, do you want
2 us to continue through the motion, Your Honor, or no?

3 THE COURT: No. No. That's okay.

4 MS. TORRES-PABÓN: Okay.

5 THE COURT: Regarding the hard drive, the
6 joinder of hard drives, I believe you were going to
7 meet and confer regarding that.

8 MR. CROSSWELL: So that's a suggestion, Your
9 Honor. We have received a privileged log from OCIF.
10 It has items that they wish to withhold, and so we
11 would like to provide that to Mr. Herrera. Maybe
12 there's some documents he would agree he doesn't need
13 to see, and then we can report back to the Court.

14 I'm sure there will be some dispute. And,
15 Your Honor, the issue for us is really we're kind of
16 between a rock and a hard place because, one, we
17 would be happy to produce all this, but also it does
18 appear the e-mails that are OCIF's privileged
19 communications -- and they happen to be in litigation
20 right now, I believe, with Bancrédito. So, you know,
21 we're trying to meet the discovery obligations but
22 also protect OCIF's potentially privileged
23 communications.

24 THE COURT: Yes, I'm aware of that
25 situation. All right. So during our last status

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1 conference I stated that I had blocked two dates,
2 February 27th and March 11th, to start this trial. I
3 think that these issues with discovery, the amount of
4 discovery being produced and to be produced, the fact
5 that I still need to rule on a number of dispositive
6 motions makes these dates not realistic. Actually
7 we're talking about March 31st to finish the
8 production on the part of the government.

9 So what I propose we do is that you meet and
10 you propose to the Court two dates in which you
11 believe that you are all available and will be ready
12 to try this case. I will choose one of the two dates
13 that you propose and it should be before October of
14 this year. And then I will set deadlines, a cutoff
15 of discovery for the government, a date for
16 designation of evidence, a pretrial conference, and
17 then I will set the trial for one of the two dates
18 that you propose. I believe that's the best course
19 of action at this time. To try to continue pushing
20 for February or March is not realistic. I could be
21 proposing a date in May, but since this discovery
22 seems to be so voluminous and I have yet to rule on
23 these motions, I believe that if you propose the
24 dates it will be better for everyone and then I can
25 set the additional deadlines, all pretrial deadlines.

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1 All right. Any other matter, any other
2 issue that you want to bring to my attention?

3 MR. CANNON: Your Honor, can I approach with
4 Mr. Crosswell just *ex parte* about the CIPA issue? We
5 could do it off the record. I just want to give you
6 a name so that we can get this resolved today. I
7 actually got an update from them already.

8 THE COURT: Okay.

9 (Ex parte discussions begin.)

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 (Ex parte discussions end.)

22 THE COURT: Okay? Any other matter?

23 MS. SÁNCHEZ: Yes, Your Honor. Your Honor,
24 the only thing is even just briefly, and I've talked
25 to my co-counsel, I mean I -- we do not believe that

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1 October is in any way realistic to try this case. I
2 mean, the volume is huge. Even if they give
3 everything to us by March 31st and then we still have
4 to do the privileged logs and we still have to file
5 all the motions regarding that. I mean,
6 realistically I don't see how this is possible before
7 sometime early '25, first quarter of '25.

8 MR. NADLER: I agree with that, Your Honor.
9 And that's not -- that's again with the targeted
10 searches and essentially a wing and prayer not
11 reviewing the majority of what's produced to make a
12 determination.

13 THE COURT: Mr. Plaza?

14 MR. PLAZA-MARIOTA: I remain hopeful. I
15 remain hopeful. I remain -- can I approach very
16 briefly. We should try. We should try to have a
17 trial, okay. If I may say something very briefly as
18 to reciprocal discovery, the government already
19 requested reciprocal discovery. We are going to be
20 filing with the Court a motion requesting the
21 issuance of subpoenas in order to finish our
22 investigation and obtaining the supporting documents
23 for our investigation. And most of that production
24 will be then turned over to the government as
25 reciprocal discovery.

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1 So we are moving ahead. Right now we are
2 going to be dealing -- well on behalf of Wanda
3 Vázquez we are going to be dealing with the filter
4 team request, but we are just not touching right now
5 the 10 million documents that we received and we will
6 continue fast-forward preparing for trial, just in
7 case.

8 THE COURT: All right. So provide me these
9 two dates and let's extend instead of October,
10 December, but I think this case should be tried in
11 2024, absent extraordinary circumstance. So provide
12 me two dates before December of this year and if we
13 encounter extraordinary circumstances pertaining to
14 discovery and so forth, I'll reconsider.

15 MS. SÁNCHEZ: Your Honor, I would also -- we
16 have several *ex parte* issues pending with the Court
17 that deal with requests, different subpoenas, for
18 documents that we have requested that are outstanding
19 with the Court. So --

20 THE COURT: Yes, I'm aware.

21 MS. SÁNCHEZ: Great. Thank you.

22 THE COURT: I'm aware of everything that is
23 pending in the docket. I've just had a very busy
24 calendar, but I am aware and I will be ruling
25 forthwith.

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1 MS. SÁNCHEZ: And then the other one is when
2 you get to our motion to dismiss based on the
3 government misconduct, as you know in that motion we
4 requested an evidentiary hearing on all those issues.
5 So we'd like that scheduled when the Court has an
6 opportunity to review.

7 THE COURT: All right. I will schedule it,
8 if I grant your request for the hearing. If not,
9 I'll rule on the papers. And I have to say that it's
10 fully briefed. I believe I have everything I need,
11 all the information and all the arguments and all the
12 citations before me. But if I feel that a hearing is
13 warranted and will assist the Court in making this
14 decision, I will for sure schedule one.

15 MS. SÁNCHEZ: Thank you. And we will
16 probably be supplementing that motion based on just
17 some of the new information that we received in this
18 last production.

19 THE COURT: All right. You may do so. How
20 long do you need to make this supplemental filing?

21 MS. SÁNCHEZ: Well, I'm hoping that -- it
22 depends on how quickly they can give us the UFED and
23 metadata so that we could search it and get
24 everything that -- you know, look at everything there
25 so we could put it all together in one supplemental.

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1 THE COURT: So you're asking for time after
2 March 31st to supplement?

3 MS. SÁNCHEZ: Well, I mean -- or I can do
4 the supplemental on a rolling basis when I find
5 something I can file. I mean...

6 THE COURT: Well, then I will never rule if
7 you keep filing.

8 MS. SÁNCHEZ: No, but I don't know how to --
9 it's difficult because I don't know what they're
10 going to -- what I'm going to find that -- so that's
11 the issue.

12 MR. NADLER: Your Honor, we are waiting to
13 file a supplemental motion until discovery is
14 complete so we know the full scope of at least what's
15 out there from what we can review and determine.

16 THE COURT: You're asking me to withhold
17 ruling on the dispositive motions until you have
18 additional time to supplement or, in the case of
19 Mr. Rossini, to file a dispositive motion?

20 MR. NADLER: That's right. There are no
21 current deadlines on dispositive motions or discovery
22 so --

23 THE COURT: You're correct.

24 MR. NADLER: -- at this point we're waiting
25 to see what the production is to file any dispositive

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1 motions, motions in limine.

2 THE COURT: All right.

3 MS. SÁNCHEZ: Unless the Court is inclined
4 to dismiss the case based on the motions filed to
5 date.

6 THE COURT: Oh, that's some thought. Not
7 ready to do that.

8 Okay, so I will set some deadlines for
9 dispositive motions. When I enter the minutes of
10 today's status conference I will set some deadlines;
11 however, again if things change, circumstance change,
12 you get additional information, then I could revisit
13 that; but at some point I have to do a cutoff for
14 supplemental dispositive motions or additional
15 dispositive motions otherwise the case will not move
16 along. All right. Thank you everyone.

17 MR. PLAZA-MARIOTA: Permission to withdraw.

18 THE COURT: Granted.

19 THE COURTROOM DEPUTY: All rise.

20 (The Court exits the room.)

21 (Status conference concluded at 4:41 p.m.)

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1 UNITED STATES DISTRICT COURT)
2 OF) ss.
3 PUERTO RICO)
4
5
6

7 CERTIFICATE
8
9

10 I, EVILYS E. CARRIÓN-ESQUILÍN, hereby
11 certify that the proceedings and evidence are
12 contained fully and accurately, to the best of my
13 ability, in the notes recorded stenographically by
14 me, at the status conference in the above matter; and
15 that the foregoing is a true and accurate transcript
16 of the same.
17

18 /s/ Evilys E. Carrión-Esquilín

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